

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHRIS MARTINEZ,

Plaintiff,

v.

CITY OF HOLLAND, et al.,

Defendants.

CASE NO. 1:22-cv-516

HON. ROBERT J. JONKER

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION

The Court has reviewed the Magistrate Judge's Report and Recommendation (ECF No. 6) and Defendant's Objection to it. (ECF No. 7). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Defendant's objection. The Magistrate Judge recommends that Plaintiff's complaint be dismissed pursuant to 28 U.S.C §§ 1915(e)(2), 1915A for failure to state a claim. Magistrate Judge Berens further recommends that Plaintiff's motion to appoint counsel (ECF No. 4) be denied. After

its review, the Court finds that Magistrate Judge Berens' Report and Recommendation is factually sound and legally correct.

The Magistrate Judge carefully and thoroughly considered the record and the governing law. In his objections, Plaintiff primarily reiterates allegations he has already made, and that the Magistrate Judge properly found insufficient to state a claim under applicable law. Nothing in Plaintiff's objections change the fundamental analysis. In his fragmented objections, Plaintiff insists he has made out a Fourth Amendment malicious prosecution claims. This claim fails for the reasons articulated by the Magistrate Judge. Moreover, to maintain a Fourth Amendment claim under § 1983, Plaintiff must demonstrate, among other things, that Plaintiff obtained a "favorable termination" of the underlying state criminal proceeding. *See Thompson v. Clark*, 142 S. Ct. 1332, 1340 (2022). Plaintiff has not done so here. Indeed, he pleaded no contest to the crime charged. A no contest plea "goes to the nature of the plea—not the nature of the judgment," and Plaintiff was convicted of the underlying crime. *See Sosinski v. Unum Life Ins. Co. of Am.*, 15 F. Supp. 3d 723, 731 (E.D. Mich. 2014); see also *In re Lewis*, 389 Mich. 668, 680–681, 209 N.W.2d 203 (Mich.1973) (a conviction based on a no contest plea is as conclusive as any other conviction under Michigan law). For the very reasons the Report and Recommendation details, this Court agrees with the recommendations.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 6) is **APPROVED AND ADOPTED** as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's motion to appoint counsel (ECF No. 4) is **DENIED**.

The Court discerns no good-faith basis for appeal of this matter. *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997); 28 U.S.C. § 1915(a)(3).

Dated: September 6, 2022

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE